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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,881	02/06/2004	Allan L. Green	5051.002	7459

7590 11/15/2005  
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Fort Lauderdale, FL 33301

EXAMINER
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WIEKER, AMANDA FLYNN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/773,881		GREEN ET AL.	
	Examiner		Art Unit	
	Amanda F. Wieker		3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to:
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) ,<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings, with clear reference numerals, will be required if the application is allowed.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 12, 14, 16 (page 5) and 94 (page 8). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the toe separator having a sole plate with four toe dividers and the subject matter of claims 5-9 and 14-18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

4. The abstract of the disclosure is objected to because it exceeds the required length, and the phrase "are disclosed" can be inferred from the abstract and should be deleted. Correction is required. See MPEP § 608.01(b).

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

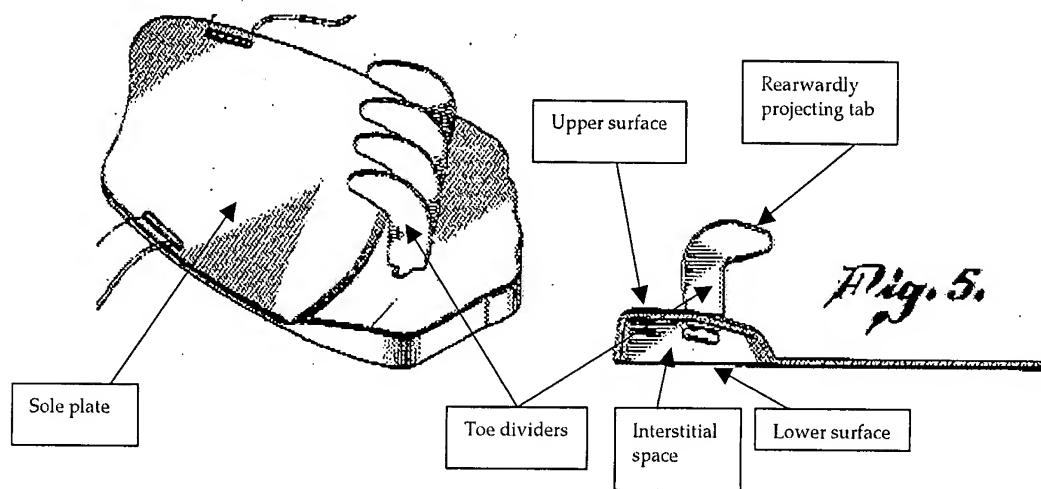
6. Claims 1, 5, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Design Patent Number Des. 162,870 to Pearce.

Pearce discloses a toe separator to be worn on the foot of a patient, the toe separator comprising:

a sole plate sized and shaped to conform to the sole of a human foot; said sole plate including a front portion including four upwardly projecting toe dividers.

The sole plate comprises a double wall structure having upper and lower walls in spaced relation defining an interstitial space.

The toe dividers each include an upper surface and rearwardly projecting tab connected to the upper surface.



*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-3 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of U.S. Patent Number 6,298,580 to Tadayon.

Pearce discloses the previously described toe separator comprising a sole plate and four upwardly projecting toe dividers. Pearce does not specify the material of the sole or toe dividers.

Tadayon discloses a toe separator comprising a sole plate and four upwardly projecting toe dividers. Tadayon specifies that the material of the sole and toe dividers be foam, to cushion the foot and make the toe separator comfortable to wear.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the toe separator disclosed by Pearce, wherein the sole and toe dividers are made of foam, as taught by Tadayon, to cushion the foot and make the toe separator comfortable to wear.

9. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of U.S. Patent Number 4,877,018 to Ikebe et al.

Pearce discloses the previously described toe separator comprising a sole plate and four upwardly projecting toe dividers. Pearce does not specify that the toe dividers include medicated powder.

Ikebe et al. disclose a toe separator comprising four upwardly projecting toe dividers. Ikebe et al. specify that it is well known in the art to provide medicated powder to toe dividers, to deodorize and dry the area between the toes (col. 1, lines 13-26).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the toe separator disclosed by Pearce, wherein the toe dividers include medicated powder, as taught by Ikebe et al., to deodorize and dry the area between the toes.

10. Claims 6-9 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of U.S. Patent Application Number 2005/0034335 to Shows.

Pearce discloses the previously described toe separator comprising a sole plate and four upwardly projecting toe dividers. Pearce shows that the sole plate comprises a double wall structure having upper and lower walls in spaced relation defining an interstitial space. Pearce does not specify the material included in the interstitial space of the sole.

Shows discloses a sole plate sized and shaped to conform to the sole of a human foot. Shows specifies that the sole plate comprise upper and lower walls in spaced relation defining an interstitial space, wherein gel or water (liquid) is contained within the interstitial space to provide pain relief and warming or cooling to the sole of the user.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the toe separator disclosed by Pearce, wherein the interstitial space of the sole plate includes gel or water, as taught by Shows, provide pain relief and warming or cooling to the sole of the user.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
afw

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